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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,073	02/04/2004	Reynolds E. Moulton III	DGP-005	4526
7590 Klaus P. Stoffel Wolff & Samson PC One Boland Drive West Orange, NJ 07052			EXAMINER NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/772,073

Applicant(s)

MOULTON, REYNOLDS E.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-16, 18-26 and 28-47 is/are pending in the application.
- 4a) Of the above claim(s) 13, 23 and 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 14-16, 18-22, 24-26, 28-31, 38-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-5,7-11,14,15,25,26,28-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (5765508) in view of Tsengas (6571742) and Darda (3981098).

For claims 1 & 4, Markowitz teaches a pet toy, comprising: a housing 4; a drive unit 14,16,18,20 coupled to the housing and adapted to move the housing. However, Markowitz is silent about a drive unit coupled to the housing and adapted to move the housing in a first direction of travel, the drive unit being configured to generate drive energy for movement in the first direction of travel by movement of the drive unit in a direction opposite the first direction of travel of the housing, and a pet attractant coupled to the housing.

Darda teaches a toy that can be played by a pet, the toy comprising a housing 147; a drive unit (the whole system as shown in the figures) coupled to the housing and adapted to move the housing in a first direction of travel, the drive unit being configured to generate drive energy for movement in the first direction of travel by movement of the drive unit in a direction opposite the first direction of travel of the housing. It would have been an obvious substitution of functional equivalent to substitute the drive unit of

Art Unit: 3643

Markowitz with the drive unit with the features as described above taught by Darda, since both types of drive unit would perform the same function to move the toy in the desired direction.

Tsengas teaches the same field of endeavor of toy in which he places a pet attractant such as catnip (col. 5, line 45) in the toy to further entice the pet to play with the toy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ catnip as taught by Tsengas in the toy of Darda in order to further entice the pet to play with the toy.

For claim 2, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches wherein the housing is configured in the shape of an animal.

For claim 3, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches wherein the housing is configured in the shape of a mouse.

For claims 5 & 26, Markowitz as modified by Tsengas and Darda (emphasis on Darda) further teaches wherein the drive unit is a pull-back spring drive. Self explanatory, see figures and specification of Darda.

For claims 7 & 28, Markowitz as modified by Tsengas and Darda (emphasis on Darda) further teaches wherein the energy is directed through at least one wheel, propelling the pet toy in the first direction. Self explanatory, see figures and specification of Darda.

For claim 8, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches an outer layer, mounted on said housing, to provide a fur-like appearance (col. 4, line 5).

For claim 9, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches at least one facial component, mounted on a forward-facing portion of said housing.

For claim 10, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches the at least one facial component including an eye, a nose and an ear.

For claim 11, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) teaches a tail 6, mounted to said housing and located on a rearward-facing portion of said housing.

For claim 14, Markowitz as modified by Tsengas and Darda is silent about wherein the pet attractant is located outside the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the pet attractant on the outside of the housing of Markowitz as modified by Tsengas and Darda, depending on the user's preference to further entice the pet.

For claims 15 & 25, in addition to the above, Markowitz further teaches a chassis (as shown in fig. 2, the frame and wheels), and a storage unit (the mouse housing). All other limitations have already been explained in the above, therefore, will not be repeated.

For claim 29, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) further teaches a ballast, located over said drive unit. Note, the nuts and bolts to fasten parts together in Markowitz are considered to be ballasts since Applicant

Art Unit: 3643

discloses that the ballast can be the nuts or bolts in paragraph [0022] of Applicant's specification.

For claim 30, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) further teaches wherein the drive unit comprises at least one biased gear, an axle and a wheel, wherein the gear and axle are rotated by the based gear. See fig. 2 of Markowitz.

For claim 31, Markowitz as modified by Tsengas and Darda (emphasis on Markowitz) further teaches wherein the drive unit comprises a wheel 28.

3. **Claims 12,16,18-22,24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz as modified by Tsengas and Darda as applied to claim 1 above, and further in view of Bartleson (5653196).

For claim 12, Markowitz as modified by Tsengas and Darda is silent about the pet attractant being located in a storage unit coupled to the housing.

Bartleson teaches the same field of endeavor of pet toy in which Bartleson places catnip in a storage unit 6 and placed the unit in the housing or toy 1 so as to prevent the catnip from spilling everywhere. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the catnip of Markowitz as modified by Tsengas and Darda in a storage unit as taught by Bartleson coupled or placed inside to the housing in order to prevent the catnip from spilling everywhere.

For claim 16, the Examiner is considering ref. # 4 to be the housing instead of the storage unit, which leaves a storage unit lacking in the teaching of Markowitz as

Art Unit: 3643

modified by Tsengas and Darda. However, as explained in the above claim 12, Bartleson teaches the catnip storage unit; therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the catnip of Markowitz as modified by Tsengas and Darda in a storage unit as taught by Bartleson coupled or placed inside to the housing in order to prevent the catnip from spilling everywhere.

For claims 18-22,24, these limitations have been discussed in the above, so please see the above.

4. **Claims 38-47** are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (5765508) in view of Darda (3981098).

For claim 38, Markowitz teaches a pet toy, comprising: a housing 4 configured in the shape of an animal; and a drive unit 14,16,18,20 coupled to the housing adapted to move the housing in a first direction of travel. However, Markowitz is silent about the drive unit configured to be provided with generate drive energy for movement in the first direction of travel by movement of the drive unit in a direction opposite from the first direction of travel of the housing.

Darda teaches a toy that can be played by a pet, the toy comprising a housing 147; a drive unit (the whole system as shown in the figures) coupled to the housing and adapted to move the housing in a first direction of travel, the drive unit being configured to generate drive energy for movement in the first direction of travel by movement of the drive unit in a direction opposite the first direction of travel of the housing. It would have been an obvious substitution of functional equivalent to substitute the drive unit of

Art Unit: 3643

Markowitz with the drive unit with the features as described above taught by Darda, since both types of drive unit would perform the same function to move the toy in the desired direction.

For claim 39, Markowitz as modified by Darda (emphasis on Darda) further teaches wherein the drive unit is provided with energy directed through at least one wheel, the drive unit configured to propel the pet toy in the first direction by turning the at least one wheel. See drawings and specification of Darda.

For claims 40-47, see the above for explanation, for all limitations to these claims have already been discussed.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5,7-12,14-16,18-22,24-26,28-31,38-47 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3643

A handwritten signature in black ink, appearing to read 'Son T. Nguyen', written in a cursive style.

Son T Nguyen
Primary Examiner
AU 3643